THE CHARTER OF RIGHTS AND THE REDISTRIBUTION OF ELECTORAL DISTRICTS

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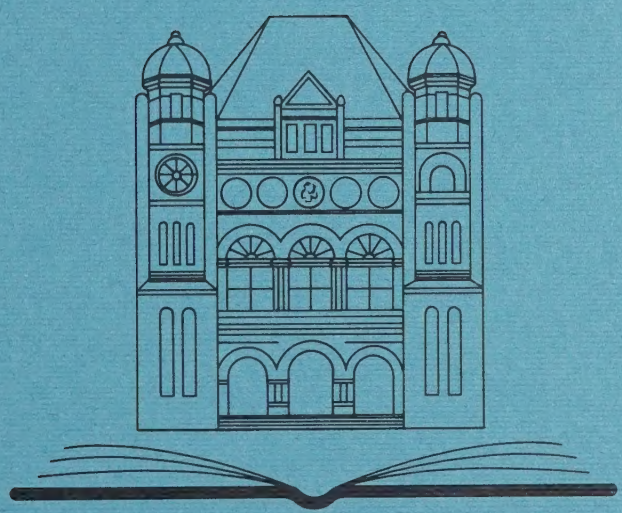

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THE CHARTER OF RIGHTS AND THE REDISTRIBUTION OF ELECTORAL DISTRICTS

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INTRODUCTION*

The *Canadian Charter of Rights and Freedoms* guarantees a variety of rights and freedoms, including what are known as "democratic rights." Two years ago the Supreme Court of Canada ruled that the drawing of provincial electoral boundaries was subject to one of those democratic rights — in particular, the right to vote. This right is found in section 3 of the *Charter*, which begins

> Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly . . . .[1]

The following questions emerge: What criteria does section 3 impose on a provincial redistribution scheme? For instance, must the same number of voters reside in each district? If absolute voter parity is not required, what deviations are permissible? Are there other provisions of the *Charter* which can affect the legality of a redistricting scheme for Ontario?

These questions arise within the context of the democratic theory of "representation by population" or "one person, one vote." This philosophy of representation holds that constituencies should be relatively equal in population, thereby making the value of each vote more or less equal.[2]

SUPREME COURT OF CANADA AND ELECTORAL BOUNDARIES

Background

The Supreme Court of Canada addressed the above questions (apart from the last one) in *Reference re: Electoral Boundaries Commission Act*[3] — a case involving the redistribution of provincial electoral districts in Saskatchewan. The province's

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*This paper is designed to be read in conjunction with Current Issue Paper (CIP) 24, *The Redistribution of Electoral Districts in Ontario* (updated in May 1993). CIP 24 reviews the last three redistributions in Ontario; emphasis is placed in the Paper upon the composition, mandate, procedure, and reports of the various electoral boundaries commissions, as well as the criteria applied by each commission. CIP 24, however, does not look at the impact of the *Charter of Rights* on criteria for redistribution in Ontario.

Representation Act, 1989[4] had established new electoral boundaries, which were based upon the recommendations of a commission created under an *Electoral Boundaries Commission Act*.[5] Among other things, this latter Act required the commission to create a fixed distribution of constituencies — 29 urban, 31 rural, and 2 northern — with the boundaries of the urban ridings to coincide with existing municipal boundaries. Another provision called for a "constituency population quotient" to be obtained by dividing the total voter population by the total number of constituencies. Southern ridings were permitted a population variance of ±25% from this quotient; in the case of the northern ridings, the variance could be up to 50%.[6]

On a reference to the Saskatchewan Court of Appeal, the Saskatchewan government asked two questions in respect of the constituencies defined in the *Representation Act, 1989*: (1) Did "the variance in the size of voter populations among those constituencies" contravene the *Charter of Rights*? and (2) Did "the distribution of those constituencies among urban, rural and northern areas" also contravene the *Charter*? The Court of Appeal responded that the electoral boundaries did violate the right to vote guaranteed by section 3 of the *Charter* and, with the exception of the two northern ridings, could not be justified under section 1.[7]

By way of background, it should be noted that section 1 of the *Charter* contemplates a two-stage process for the judicial review of legislation. In the first stage, the court must determine whether the challenged law limits a guaranteed right or freedom. If the challenged law has this effect, the second stage is reached: in this stage section 1 is invoked and the court must decide whether the limit is a reasonable one that can be demonstrably justified in a free and democratic society.[8]

Deviation from "One person — one vote": Application of Section 3 of the Charter

On appeal, a majority of the Supreme Court of Canada disagreed with the Saskatchewan Court of Appeal and held that section 3 of the *Charter* had not been violated. Writing for the majority, McLachlin J. succinctly defined the issue before the Court:

> The question for resolution on this appeal can be summed up in one sentence: to what extent, if at all, does the right to vote enshrined in the Charter permit deviation from the "one person — one vote" rule?[9]

McLachlin J. concluded that the purpose of the right to vote in section 3 was not equality of voting power per se, but the right to effective representation. Canada was a representative democracy, and each citizen was entitled to be represented in government. She continued that one of the conditions of effective representation was relative parity of voting power. A system which diluted one citizen's vote unduly as compared with another's ran the risk of providing inadequate representation to the citizen whose vote was diluted. The legislative power of that citizen would be reduced, as might access to and assistance from his or her representative. The result would be uneven and unfair representation.

But the need for parity of voting power did not extend to absolute parity which was "impossible." Voters died and voters moved. As a result, it was impossible to draw boundary lines which guaranteed exactly the same number of voters in each district.

Was the objective, then, as much relative parity as might be possible to achieve? McLachlin J. answered "no." Other factors might have to be taken into account:

> . . . such relative parity as may be possible of achievement may prove undesirable because it has the effect of detracting from the primary goal of effective representation. *Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic.*[10] [emphasis added]

These factors were simply examples of considerations which might justify departure from absolute voter parity in the pursuit of more effective representation. (The list was not exhaustive.)

The following principle thus emerged:

> . . . deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced.[11]

After discussing the meaning of the right to vote, McLachlin J. asked: "Do the Saskatchewan boundaries violate the right to vote?" Earlier she had said that it was the boundaries themselves (as opposed to legislation) which were directly at issue on the appeal.

The majority concluded that in general, the discrepancies between urban and rural ridings were small, no more than expected given the greater difficulties associated with representing rural ridings. "And discrepancies between particular ridings appear to be justified on the basis of factors such as geography, community interest and population growth patterns."[12] It was furthermore noted that the inappropriateness of the northern boundaries had not been seriously suggested, given the sparse population and the difficulty of communication in the area. Section 3 of the *Charter* had therefore not been violated and in these circumstances it was unnecessary to consider section 1.[13]

Comments

Representation of Rural and Urban Voters

The Supreme Court decision has been the subject of much controversy, especially with regards to the representation of rural and urban voters. The *Toronto Star*, for instance, said that the Court had "rubber-stamped a cockamamie Saskatchewan election map that unfairly shifts power to rural voters at city-dwellers' expense." It then contrasted Premier Devine's Progressive Conservatives who were "rural-based" with the "urban-rooted" New Democrats.[14] In a similar vein, the *Globe and Mail* claimed that the Supreme Court in a "surprising and disturbing" ruling had given its seal of approval to "rampant inequity in the weighting of Canadians' votes."[15] Two political scientists from the University of Calgary stated that the Court had upheld

systematic discrimination against city dwellers and that the decision "will be relegated to the trash can of history."[16]

It should be noted that the Supreme Court did acknowledge that rural areas in Saskatchewan were somewhat overrepresented and urban areas somewhat underrepresented; however, these deviations were considered by the majority to be "relatively small."[17] The rural areas had 53.0% of the seats and 50.4% of the population, whereas the urban areas had 43.9% of the seats and 47.6% of the population. The majority reviewed previous urban/rural deviations in Saskatchewan and concluded that

> . . . the effect of the allocation of seats to urban and rural ridings in the 1989 legislation was mainly to increase the number of urban seats to reflect population increases in urban areas. *This belies the suggestion that the 1989 Act was an unjustified attempt to adjust boundaries to benefit the governing party.*[18] [emphasis added]

Later in the judgment the Court referred to "the fact that it is more difficult to represent rural ridings than urban."[19] Material presented to it suggested (1) that rural ridings were harder to serve because of difficulty in transport and communications and (2) that rural voters made greater demands on their elected members, whether because of the absence of alternative resources available in urban centres or for other reasons. Thus, "the goal of effective representation may justify somewhat lower voter populations in rural areas."[20]

Population Criteria: General

The rural/urban representation issue can be seen as part of the larger question of population criteria for ridings. Robert Charney, a lawyer with the Constitutional Law and Policy Division of the Ontario Ministry of the Attorney General, points out that the Saskatchewan electoral scheme permitted the largest riding to have twice the population of the smallest riding and still was held not to violate section 3. He writes that if that kind of population disparity did not run afoul of the requirement of relative

parity, one was left to wonder just how much vote dilution the Court would tolerate before the onus shifted to the government under section 1 of the *Charter* to justify the scheme.[21]

Robert Richards and Thomas Irvine, who appeared before the Supreme Court of Canada as counsel for the Attorney General of Saskatchewan, have also commented on the population implications of the Court's decision. They believe that one of the unresolved issues is the question of how far ridings can be moved away from strict population equality before *Charter* problems are encountered. One possibility is that, with the exception of especially remote regions, variations much beyond +/-25% will be constitutionally suspect. However, they feel that "exactly where the lines of constitutional tolerance might be drawn is difficult to predict."[22] The map before the Court in the Saskatchewan case involved deviations in the southern ridings ranging from -24% to +24% from the electoral quotient.

Approaches to Electoral Redistribution: Assessment of Chief Election Officer of Ontario

Warren Bailie, the Chief Election Officer of Ontario and a member of the last Ontario Electoral Boundaries Commission, recently coauthored an article on the Supreme Court decision in which he highlighted two significantly different approaches to electoral redistribution. One general approach was rooted in the principle that equality of voting power must govern any redistribution; the other was based on the understanding that a variety of socioeconomic factors (which included population) had to be taken into account when drawing up boundaries. The latter approach was "pluralistic"; had been upheld by a majority on the Supreme Court; and had been adopted by federal and provincial electoral boundaries commissions through their words and deeds.[23]

Mr. Bailie's endorsement of the pluralistic approach elaborated upon the factors of geography, communities of interest, and minority representation (whose relevance had been acknowledged by the Supreme Court):

- *Geography.* Notwithstanding modern communication technologies, members from geographically large constituencies just could not provide the same quality of "human" interaction with constituents as could urban members.

- *Communities of interest.* It was a sociological fact that individuals formed themselves into various geographically-based communities, that these collectivities reflected important interests, and that there was a necessity to ensure that such collectivities were represented in legislatures.[24]

- *Minority Representation.* Certain distinct minority groups had suffered from systemic discrimination. Strong moral reasons existed for affording such groups special representational rights as a means of eliminating this discrimination.

Admittedly, decision-making which entailed the recognition and balancing of the various factors was "trying, often subjective and thus open to dispute."[25]

OTHER COURT DECISIONS: AN OVERVIEW

Cases involving the constitutionality of provincial electoral boundary redistributions have arisen not only in Saskatchewan (the source of the one Supreme Court of Canada judgment on the issue), but also in British Columbia and Alberta. These cases are briefly reviewed below.[26]

British Columbia

In *Dixon v. British Columbia (Attorney-General),* Chief Justice McLachlin of the British Columbia Supreme Court (prior to her elevation to the Supreme Court of Canada) ruled that the provincial legislation establishing electoral districts violated section 3 of the *Charter*. More particularly, speaking on behalf of the Court she found "anomalies [which] cannot but suggest a *gross violation* of the fundamental concept of representation by population which is the foundation of our political system" [emphasis added].[27] One riding, for example, had 15 times as many voters as another.

The Court then had to assess whether the infringement of section 3 was saved by section 1 of the *Charter*.** On this issue, it found the objectives of ensuring that geographic and regional concerns were reflected in electoral boundaries to be "pressing and substantial"; however, the means chosen to attain these ends were not proportional to the goal. As stated by the Court, "in many cases no good end seems to be served by existing population inequities . . . ."[28] Accordingly, the provisions in question were held to be contrary to the *Charter of Rights*. The following remedy was granted:

> Pending submissions on what time period may reasonably be required to remedy the legislation and the expiry of that period, the legislation will stay provisionally in place to avoid the constitutional crisis which would occur should a precipitate election be required.[29]

Subsequently, the petitioner, Dixon, applied unsuccessfully for an order declaring the legislation void as of June 30, 1989 (or such other date deemed just by the Court). The Court felt that "it must be left to the legislature to do what is right in its own time."[30] Two months after this judgment, electoral boundaries legislation was passed by the British Columbia Legislature.[31]

Alberta

In a 1991 Alberta case, which unlike *Dixon* was decided after the Supreme Court of Canada decision, the Alberta Court of Appeal upheld the constitutionality of the province's *Electoral Boundaries Commission Act*.[32] This Act prescribed basic criteria for boundaries and established a boundaries commission, but did not actually

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** In *Dixon* McLachlin C.J.S.C. explained the two-step inquiry required by section 1 in the following way: When was the limit on a *Charter* right or freedom "reasonable" and "demonstrably justified in a free and democratic society"? First, the importance of the objective underlying the impugned law had to be assessed. In order to override a *Charter* right, the objective had to relate to concerns which were "pressing and substantial" in a free and democratic society. The second step involved a proportionality test whereby the court had to examine the nature of the right, the extent of its infringement, and the degree to which the limitation furthered the attainment of the desirable goal embodied in the legislation. The ultimate question was: Were the means chosen to attain the valid objective (the legislation, regulations, or government conduct under question) proportional or appropriate to the ends? (pp. 270-271)

create the electoral districts. For this, further legislation was required. In upholding the Act, the Court applied the following test:

> We must . . . ask ourselves whether a boundary rule or decision is clearly wrong. In other words, we should not interfere unless a rule or decision is demonstrably unjustified, palpably wrong or manifestly unreasonable.[33]

The "most difficult question" for the Court was assessing the justification for 40 rural seats (including five mixed urban and rural), instead of a number closer to 33 that would reflect voter parity. It concluded that "in all the circumstances, we cannot say the choice is clearly wrong."[34]

In February 1993 the Alberta Legislature passed the *Electoral Divisions Statutes Amendment Act, 1993*.[35] Among other things, the Act amended the *Electoral Boundaries Commission Act* and the *Electoral Divisions Act*.[36] A new schedule to the latter Act defines the boundaries of the electoral divisions.

The Alberta government has since asked the Court of Appeal to determine if the new boundaries comply with the *Charter*.[37] A separate action against the boundaries was also launched by the town of Lac La Biche, but has been discontinued.[38]

The new boundaries were proclaimed in force on May 18, 1993.

OTHER SECTIONS OF THE CHARTER

In each of the above-mentioned judgments on compliance with the *Charter*, the courts asked whether the boundary schemes in question violated section 3. But were any conclusions reached about the violation of other sections of the *Charter*? The United States Supreme Court, for example, has derived a principle of equality of voting power from the guarantee of "equal protection of the laws" (the fourteenth amendment) in the *American Bill of Rights*.[39] Have the courts in Canada derived a similar principle from the equality rights provision of the *Charter*?

A review of the case law shows very little discussion of whether a redistribution scheme might contravene any *Charter* rights and freedoms, apart from the right to vote. The issue was not addressed at all by the Supreme Court of Canada.[40] In the British Columbia case, the petitioner argued that the province's system of electoral boundaries violated not only section 3 of the *Charter* (a democratic right), but also sections 2(b) (the right to freedom of expression), 7 (the right to liberty — one of the legal rights) and 15 (equality rights). The British Columbia Supreme Court dealt very briefly with these other sections of the *Charter*, stating that

> It is difficult to accept . . . that the framers of the Charter . . . intended that the [democratic] rights thus conferred could be added to or subtracted from by what they laid down in connection with legal rights or equality rights.[41]

The Court continued that if this were so, the notwithstanding clause could be used to pass legislation adversely affecting electoral rights. (Legal and equality rights are subject to the notwithstanding clause, but democratic or electoral rights, such as the right to vote, are not.) As explained by the Court

> This [determining that electoral rights are modified by legal and equality rights] would tend to dilute the paramount position of those [electoral] rights and to defeat the obvious intention of the framers of the Charter that the democratic rights of Canadians should be beyond legislative reach except through the constitutional amendment process.[42]

Having made these comments and having found that the electoral boundaries violated section 3, the Court ruled it was "unnecessary" to consider whether other sections of the *Charter* had been violated.[43]

The Alberta judgment raised the issue of possible attacks against electoral boundaries under other *Charter* sections, but without elaboration. More particularly, the Alberta Court of Appeal said

> We cannot, in an adversarial vacuum, assess this law [the province's *Electoral Boundaries Commission Act*] under every term in the Charter. We think, for example, of possible attacks under ss. 15, 27 [multicultural heritage] and 28 [rights guaranteed equally to both sexes]. We limit our comments to s. 3.[44]

FUTURE COURT CHALLENGES

Redistributions, then, might face challenges under various sections of the *Charter*, and not just section 3. In *Constitutional Law of Canada* Peter Hogg has commented on one such challenge — a possible attack under section 15, the equality guarantee. However, he questions whether an equal protection argument based simply on inequality of voting power would succeed:

> Despite the success of the equal protection argument in the U.S.A., s. 15 might not extend to disparities in voting power because of the need [under the case law] to show discrimination on the basis of the listed or analogous grounds.[45]

Another constitutional law professor, Kent Roach, has looked at the applicability of section 15 in the context of minority representation and concluded that

> Litigation alleging discrimination in districting remains a possibility in Canada. Such cases will not be easy to litigate but our section 15 jurisprudence, with its focus on discriminatory effects as opposed to purposes, will ease the burden of proving a constitutional violation.[46]

Section 15 litigation may thus hold that districting practices that dilute a minority's voting strength have discriminatory effects.[47] Roach, though, does not believe that discriminatory districting litigation will always succeed.[48]

Some other issues which might be raised before the courts include[49]

- the specific factors which can legitimately be used as a basis for moving away from strict equality in riding size. The Supreme Court of Canada did not purport to provide an exhaustive list of such factors;
- the degree to which riding populations can vary and still be constitutionally sustainable;
- the appropriate population base for determining constituency size. Should it be voter population or overall population?;
- whether the constitutional validity of a redistribution can be eroded over time. Even the most perfectly drawn map can quickly go out of date if there are major shifts in population.

As the above discussion reveals, the courts have only *begun* to address the impact of the *Charter* on the redistribution of electoral districts.

FOOTNOTES

[1] Part I of the *Constitution Act, 1982* (R.S.C. 1985, Appendix II, No. 44), s. 3.

[2] See Canada, Royal Commission on Electoral Reform and Party Financing (Pierre Lortie, Chair), *Reforming Electoral Democracy: Final Report* (Ottawa: Supply and Services Canada, 1991), vol. 1, p. 136.

[3] (1991), 81 D.L.R. (4th) 16.

[4] S.S. 1989-90, C. R-20.2.

[5] S.S. 1986-87-88, c. E-6.1.

[6] S.S. 1986-87-88, c. E-6.1, ss. 14-17 and 20.

[7] *Reference re: Electoral Boundaries Commission Act* (1991), 78 D.L.R. (4th) 449.

[8] See Peter W. Hogg, *Constitutional Law of Canada*, 3rd ed. (Toronto: Carswell, 1992), section 35.1.

[9] (1991), 81 D.L.R. (4th) 16 at 34. Included in the majority were McLachlin, La Forest, Gonthier, Stevenson and Iacobucci JJ. Sopinka J. wrote separate concurring reasons.

[10] Ibid., p. 36.

[11] Ibid.

[12] Ibid., p. 45.

[13] The dissenting justices, on the other hand, found a violation of section 3 which was not saved by section 1. It had not been established that there was a "pressing or substantial need" either to impose a fixed quota of urban and rural ridings or to confine the urban ridings to existing municipal boundaries. Even assuming such a need, it could not be said that the rights of urban voters had been interfered with as little as possible. Ibid., p. 29 (Cory J., Lamer C.J.C. and L'Heureux-Dubé J. concurring).

[14] "A sparkling dissent," *Toronto Star*, 12 June 1991, p. A24.

[15] "What your vote's worth," *Globe and Mail*, 7 June 1991, p. A14.

[16] D.J. Bercuson and Barry Cooper, "Maintaining a tyranny of the minority," *Globe and Mail*, 18 June 1991, p. A15.

[17] *Reference re: Electoral Boundaries Commission Act* (1991), 81 D.L.R. (4th) 16 at 42.

[18] Ibid.

[19] Ibid., p. 44.

[20] Ibid.

[21] Robert E. Charney, "*Saskatchewan Election Boundary Reference*: 'One Person — Half a Vote'," *National Journal of Constitutional Law* 1:2 (November 1991): 228. Charney believes that the Supreme Court of Canada decision may render section 3 of the *Charter* "an ineffectual safeguard against political gerrymandering" (p. 225).

[22] Robert G. Richards and Thomson Irvine, "Reference re Provincial Electoral Boundaries: An Analysis," in John C. Courtney, Peter MacKinnon, and David E. Smith, eds. *Drawing Boundaries: Legislatures, Courts, and Electoral Values* (Saskatoon: Fifth House Publishers, 1992), p. 59.

[23] Warren R. Bailie and David Johnson, "Drawing the Electoral Line," *Policy Options* (November 1992): 23-24. David Johnson is a Research Analyst in the Office of the Chief Election Officer of Ontario.

[24] Alan Stewart, the Secretary of the last Ontario Electoral Boundaries Commission and Special Adviser (Legal) to the Chief Election Officer, has written that the rationale of the principle of community of interest is that electoral districts "should be, as far as possible, cohesive units, areas with common interests related to representation." They must be more than arbitrary, random groupings of individuals. Stewart, "Community of Interest in Redistricting," in David Small, ed., *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*, prepared for the Royal Commission on Electoral Reform and Party Financing, v. 11 of the Research Studies (Toronto: Dundurn Press, 1991), p. 124.

[25] Bailie and Johnson, "Drawing the Electoral Line," p. 24.

[26] In October 1990, a claim challenging the electoral districts legislation of the Northwest Territories (NWT) was filed with the NWT Supreme Court. The claim alleged violations of ss. 2(b), 3, 6, 7, and 15(1) of the *Charter of Rights*, but was discontinued. This court action is reviewed in Joan Irwin, *Electoral Boundaries*, Briefing Note (Yellowknife: Research Services, Northwest Territories Legislative Assembly, 1993).

[27] (1989), 59 D.L.R. (4th) 247 at 268.

[28] Ibid., p. 272.

[29] Ibid., p. 284.

[30] *Dixon v. B.C. (A.G.)* (1989), 37 B.C.L.R. (2d) 231 at 235.

[31] *Electoral Boundaries Commission Act*, S.B.C. 1989, c. 65.

[32] S.A. 1990, c. E-4.01. The Court answered "in general terms that the manner in which boundaries and areas are proposed and established under the Act seems not to offend s. 3 of the *Charter* in the sense that the general scheme of the Act is of the sort approved by the Supreme Court of Canada in *Reference re Provincial Electoral Boundaries*."

Reference re Electoral Boundaries Commission Act (Alberta), [1992] 1 W.W.R. 481 at 488.

[33] *Reference re Electoral Boundaries Commission Act (Alberta)*, pp. 487-488.

[34] Ibid., pp. 489 and 491.

[35] Bill 55, *Electoral Divisions Statutes Amendment Act, 1993*, 4th Sess., 22nd Leg. Alta. 41 Eliz. II, 1993 (assented to 16 February 1993).

[36] S.A. 1983, c. E-4.05.

[37] Alberta, O.C. 215/93, 24 March 1993.

[38] *Town of Lac La Biche v. The Queen*, Court of Queen's Bench of Alberta, Judicial District of Edmonton, No. 9303 05191. In the "Originating Notice" (issued 10 March 1993) the Town alleged that the electoral division in which it was to be located had been established in a manner contrary to s. 3 of the *Charter*. One of the particulars was that there had been a failure "to properly consider the geography, community history, community interests, economic linkages and trading patterns, and other relevant matters" (p. 4). The action was discontinued after the Alberta Court of Appeal on April 30, 1993, refused to grant an interim injunction on the proclamation of the province's new electoral boundaries. See Alberta Justice, "Electoral Boundaries Injunction Lifted," *News release*, 30 April 1991, p. 1.

[39] See the discussion in *Dixon* (1989), 59 D.L.R. (4th) 247 at 260-262.

[40] The reference to the Supreme Court of Canada asked whether the boundaries were consistent with the *Charter* as a whole, and not just section 3. The Supreme Court, however, interpreted the questions narrowly, holding that "the basic question put to this court is whether the variances and distribution reflected in the constituencies themselves violate the Charter guarantee of the right to vote" (1991), 81 D.L.R. (4th) 16 at 31. The same approach had been adopted by the Saskatchewan Court of Appeal. "The essential questions are whether the legislative framework at issue infringes the voting rights guaranteed under s. 3 of the Charter, and if so, whether the infringement is justified under s. 1 of the Charter" (1991), 78 D.L.R. (4th) 449 at 453.

[41] *Dixon* (1989), 59 D.L.R. (4th) 247 at 269.

[42] Ibid.

[43] Ibid., pp. 269-270.

[44] *Reference re Electoral Boundaries (Alberta)*, [1992] 1 W.W.R. 481 at 485.

[45] Hogg, *Constitutional Law of Canada*, section 42.1(c), footnote 21. The listed grounds are "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Analogous grounds involve immutable personal characteristics. See Hogg, section 52.7(e).

[46] Kent Roach, "Chartering the Electoral Map into the Future," in *Drawing Boundaries*, p. 211.

[47] Ibid., p. 213.

[48] Ibid., p. 211.

[49] This list is derived from Richards and Irvine, pp. 58-62. Altogether, Richards and Irvine highlight seven issues which they consider unresolved in the wake of the Supreme Court of Canada decision.